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REPORTS OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

SINGAPORE REPORTS

RE MANA SEENA VEERAN DECD.;

RAJOO s/o MAGALEE KARUPIAH & ANOR. v. HUSSAIN s/o M.S. VEERAN

[O.C.J. (Choor Singh J.) September 27, 1975]
[Singapore — Civil Suit No. 1200 of 1974]

Wills — Will executed in hospital in solicitor's presence — After death of testator discovery of two letters to solicitors alleged to have been written by testator — Letters showing testator's intention to revoke will — Non-delivery of letters as a result of third-party's intervention — Whether will is effectively revoked — Application of common law and Wills Act (Cap. 41), s. 6.

Practice and Procedure — Contentious probate proceedings — Pleadings — R.S.C. 1970, O.72 r.13(3).

The facts of this case are as follows. The plaintiffs and the defendant are the beneficiaries as well as executors and trustees of the testator's will. The testator executed the said will while in hospital and in the presence of two witnesses and his solicitor. After his death, two letters alleged to have been written by him were discovered. These letters were addressed to his solicitors informing them of the testator's intention to have the said will revoked. The letters were never delivered to the solicitors during the testator's lifetime.

The defendant, the only son of the testator, sought to establish that the will was effectively revoked.

Held: (1) though a testator may have done everything which he considered necessary to revoke his will, the will is not revoked if he has not adopted one or other of the modes of revocation laid down in the Wills Act;

(2) it is not the law that mere intention or even attempt of a testator to revoke his will, is sufficient to produce revocation, within the meaning of the Wills Act, for the legislature having pointed out certain modes by which a will may be revoked, it is not in the power of the court, under any circumstances, to dispense with any of its requisites, and accept the mere intention or endeavour to perform the prescribed act, as a substitute or equivalent for the act itself, though the intention or endeavour may have been frustrated by the improper behaviour of a third person;

(3) the will was executed in accordance with the requirement of section 6 of the Wills Act and the testator was alert and in command of his faculties. The will has not been revoked and is entitled to probate.

Cases referred to:-

(1) *Battan Singh & Ors.* v. *Amischand & Ors.* [1948] A.C. 161.

(2) *Doe on the Demise of Reed* v. *Alice Harris*, 112 E.R. 79.

(3) *Cheese* v. *Lovejoy* (1875-6) 2 P.D. 251.

(4) *In the Estate of De Kremer* (1966) 110 Sol. Jo. 18.

(5) *In the Goods of Durance*, (1872) 2 P.D. 406.

(6) *Re Spracklan's Estate* [1938] 2 All E.R. 345.

CIVIL SUIT.

P. Suppiah for the plaintiffs.

John Pillai for the defendants.

Choor Singh J.: The plaintiffs commenced these proceedings to establish the Will of one M. S. Veeran who died in Singapore on January 1, 1974.

The testator, in his Will dated the October 11, 1973, appointed the plaintiffs and the defendant to be the executors and trustees of the said Will. The three of them are also beneficiaries under the Will together with two others. The defendant is the only son of the testator and in fact his only child, and if the Will is not established, he will inherit the whole of the estate of the deceased. On the other hand if the Will is established, he will get a mere one-fifth share. As the defendant does not accept the validity of the Will, the plaintiffs were obliged to bring this Suit against him to establish the Will.

The facts are these. The testator was a fairly old man, said to be over 70 years old when he died and was in ill health for some years prior to his death. During the last three months prior to his death he was in and out of three different hospitals. No medical evidence was called in this case but according to an agreed medical report from the Outram Road General Hospital, the testator had been treated there in 1970 for myocardial infarction and diabetes mellitus and later in 1973 for disseminated cancer. In 1970 he had surgical clearance of right axillary lymph nodes and in 1972 he received radiotherapy to the same part. He was re-admitted in the Outram Road General Hospital on October 1, 1973 and a Ba Swallow examination on October 11, 1973 revealed cancer of the oesophagus which had probably given rise to the disseminated cancer. He was treated symtomatically and discharged on October 15, 1974.

On October 30, 1973 the testator was admitted in the Youngberg Memorial Hospital. He did not stay there very long and was discharged on November 3, 1973. On November 13, 1973 he was re-admitted in the Youngberg Memorial Hospital and again he did not stay very long. He was discharged on November 14, 1973.

On November 18, 1973 the testator was admitted in Mt. Alvernia Hospital where he stayed till December 20, 1973 when he went home. He died in his house at Kampong Simpang Bedok on January 1, 1974.

The disputed Will was drawn up by Mr. Yusof Jumabhoy who gave evidence for the plaintiffs. He stated that he knew the testator from 1955 onwards and had done some legal work for him since that year. He explained that the testator was stone deaf and could not hear a thing and that this was his condition ever since he knew him. When obtaining instructions he had to write out any questions he had to ask the testator, show the questions to him and then also record the testator's answers in writing. He added that the testator, in view of his handicap, often lip read his questions and would give an answer before he completed writing the questions. That being so, sometimes when taking instructions, he did not complete the question he was writing and took down the testator's answer straight away.

Mr. Jumabhoy stated that on September 1, 1973, one of his clerks told him that the testator wanted to make a Will and so he went to the testator's house which was in a large kampong at the junction of Upper Changi Road and Bedok Road. He was driven there in the testator's car driven by one Shaik Mohamed Mastan who lived near the testator's house and often drove his car for him. He took down the testator's instructions on that day on sheets of paper. He also took further instructions later on other dates. All these instruction sheets were produced in court and the bundle was marked Exhibit P2. Copies of them appear in the Agreed Bundle on pages A.B.1 to A.B.13. Mr. Jumabhoy stated that the testator looked all right to him on September 18, 1973 when he was with the testator from 3.30 p.m. to 5 p.m.

Mr. Jumabhoy saw the testator again on October 4, 1973 when he went to see him at his request at the Outram Road General Hospital. There he again recorded instructions for the testator's Will. The testator was lying in bed. He shook hands with the testator and asked him how he felt. Mr. Jumabhoy stated:

"... The testator was ill — no running away from that. That is why he was in hospital. But mentally he was quite alert and spoke clearly and I was able to record his instructions as appear in A.B.5 to A.B.8 inclusive.... Having obtained the testator's instructions and having informed him that I would prepare a draft for him to see I left. That is all that took place on October 4, 1973 at the General Hospital."

Having prepared a draft Will, Mr. Jumabhoy went to see the testator again on October 10, 1973. His evidence about this visit to the testator and the visit on the next day is as follows:—

"... I had told the deceased that I would prepare a draft Will for him to see. I did so and went to see him on October 10, 1973. I knew why I was going to the hospital. So I had in my office A.B.9 typed out and took it along with me to the hospital together with the draft Will in duplicate. Once again, the deceased, although ill, was in full possession of his mental faculties and he greeted me and I produced to him A.B.9, A.B.10 and 11 and A.B.12 and 13 are the same. In A.B.12 the blanks are filled up. I read over to the deceased as he was reading it. I had one copy and he had one copy of the draft Will. In short I completed taking his instructions in full. There was nothing left to be done except to engross the Will. All this took place on October 10, 1973. On October 11, 1973 I went to the General Hospital together with Shaik Mohamed Mastan who was driving the car, Madam Valli the second plaintiff and one Ramakrishnan whom I met for the first time, and I believe he was brought by S. M. Mastan to be the second witness to the Will. He knew the deceased. I told him that the deceased was going to execute the Will and he appeared to understand why he was accompanying us. We entered the deceased's room *i.e.* all four of us. The deceased greeted us and made as if to sit up. At this stage the second plaintiff assisted the deceased to sit up by propping some pillows. I sat down and handed the engrossment of the Will to the deceased. It is Ex. P 1 in this court. Mastan had by this time gone to the balcony and while the deceased was reading the Will, Ramakrishnan also got up and went and joined Mastan on the balcony. The deceased read the Will in English very slowly. When he had finished reading it I asked him whether it was all right. He must have said 'yes'. Then I asked him to sign while Madam Valli helped him to sit up. I called Ramakrishnan from the balcony and told him that the deceased was about to sign the Will and that I would attest it first and thereafter he should do likewise. On Ex. P1 appears my signature and that of Ramakrishnan and of course that of the testator. The deceased then told me to keep Ex. P1. My recollection is that I left a copy of Ex. P1 with him. After a few minutes we all left. There is no question in my mind that the deceased did not know what he was doing right up to the end. He was weak, it is true. It is also true that he had to be helped to sit up in bed. But there was nothing wrong with his head. He was alert...."

On November 12, 1973 *i.e.* about a month after he had executed the Will, the testator wrote in his own handwriting a letter to Mr. Jumabhoy in the following terms:—

"12.11.1973

Dear Mr. Yusof Jumabhoy,
Please cancel the Will we made the other day.
I am detained in hospital this morning.

Yours faithfully,
M. S. Veeran

Witness: S. M. Mohamed
10 a.m."

The testator instructed Shaik Mohamed to sign at the foot of the letter as a witness and also to record the time, which Shaik Mohamed did. The testator then instructed Shaik Mohamed to deliver the letter to Mr. Jumabhoy. Shaik Mohamed never delivered this letter to Mr. Jumabhoy. This letter is A.B.43 in the Agreed Bundle.

The defendant says that on December 5, 1973, on his father's instructions he went to the office of Almenoar & Co. and there he persuaded a clerk named Shaik Ibrahim, who incidentally is a brother of Shaik Mohamed, to type a letter in the following terms:—

"M. S. Veeran Esq.,
Mount Alvernia Hospital,
Upper Thomson Road,
Singapore.
5th December 1973

Tan Sri Syed Esa Almenoar,
No. 36 Winchester House,
Collyer Quay, Singapore.

Dear Tan Sri,

As you know it that I am now ill and recuperating in the abovementioned hospital and I shall be pleased, being my lawyer, if you could make arrangements for my son, Hussain to collect the rents of the properties in my Estate.

Please write to Mr. Jumabhoy of M/s. Mallal & Namazie to cancel the Will.

Yours very sincerely,
Sgd. M. S. Veeran"

The defendant then took this typed letter to the Mount Alvernia Hospital where the testator is alleged to have signed it and to have instructed the defendant to deliver it to Tan Sri Syed Esa Almenoar. The defendant did not do that but instead kept the letter in

his house in his locked cupboard. The next day when the testator asked him if he had delivered the letter, he told his father a lie by saying that he had done so. This letter is A.B.44 in the Agreed Bundle.

The testator died on January 1, 1974. Neither A.B.43 nor A.B.44 were delivered to their respective addresses while the testator was alive.

On or about the March 5, 1974 Shaik Mohamed called at the office of Tan Sri Syed Esa Almenoar and produced to him the letter A.B.43 which he had been instructed by the testator to deliver to Mr. Jumabhoy and which he had failed to do so. Tan Sri Esa who gave evidence for the defendant states that he was shocked and pretty annoyed with Shaik Mohamed when he saw A.B.43 and he took Shaik Mohamed to task for not delivering the letter to Mr. Jumabhoy as instructed by the testator. According to Tan Sri Esa, Shaik Mohamed gave the excuse that he was a neighbour of the testator; that he was also working for him as his motor-car driver; that he was living on the same estate where the second plaintiff lived; that after the testator's death he was working for the second plaintiff; that some of the testator's relatives living on the estate were gangsters; that he had his wife and children living on the estate and that he was afraid that if he delivered the letter the gangsters may cause harm to him or his family. Tan Sri Esa stated that as Shaik Mohamed would not allow him to keep the said letter he had a photostat copy made of the original of A.B.43 and then returned the original to Shaik Mohamed who promised to produce it in court when required.

Shaik Mohamed has now refused to attend court although a subpoena has been served on him by the court process server. As he has refused to produce the original of A.B.43 in court, secondary evidence of it is admissible and there cannot be better secondary evidence of it than a photostat copy which is A.B.43. I hold that under the circumstances A.B.43 is admissible in evidence on the strength of Tan Sri Esa's evidence that he had seen and read the original of A.B.43 and that A.B.43 is a true photostat of the original letter produced to him by Shaik Mohamed on or about March 5, 1974.

On March 7, 1974 the defendant went to see Tan Sri Esa and produced to him the original of A.B.44. Tan Sri Esa states that he was again shocked and annoyed to see another letter from the testator which had not been delivered in his life time. The defendant explained to him that had he brought the letter to him, he would have insisted on the defendant collecting the rents of the houses on his father's estate which he did not wish to do because of his fear of the second plaintiff who was then collecting the said rents. And as regards the Will, the defendant explained that he knew that his father had already written a letter to Mr. Jumabhoy asking him to cancel the Will; that Shaik Mohamed had told him that he had delivered that letter to Mr. Jumabhoy and that under those circumstances there was no point in his delivering A.B.44 to Tan Sri Esa.

The defendant has pleaded in his Amended Defence and Counterclaim as follows:—

"The abovenamed deceased at the time when the said Will purports to have been executed was not of sound mind, memory and understanding."

Under the heading of Particulars are five paragraphs of particulars. Four of these paragraphs have nothing to do with "sound mind, memory and understanding". The only paragraph which has some bearing on the defence raised is the one where it is alleged that on October 6, 1973 when the defendant visited the testator at Outram Road General Hospital, the testator "cried and asked the defendant, 'where is my son Hussain'?" and that again on or about October 8, 1973 the testator again asked for his son when the defendant was standing before the testator. This is however not borne out by the defendant's own witness Shaik Ibrahim who states that the testator was able to recognise his son but was a little slow in doing so.

Counsel for the defendant, in opening his case stated that the defendant was withdrawing the allegation that the testator was not of sound mind; that the defendant's case was that because the testator's memory was bad he did not understand the true meaning of the Will as drawn up by Mr. Jumabhoy; that the terminology used in the Will was beyond the testator's comprehension; that his health had affected his memory; and that he was suffering from several diseases which had undermined his ability to appreciate the legal expressions in the Will such as "*in loco parentis*" and "the law of perpetuities". At the close of the case for the defendant his counsel again repeated that the defendant was not contesting the Will on the ground that the testator was incapable or insane but on the ground that he was not aware of and could not understand the nature of the Will.

Counsel for the plaintiffs submits that the defendant having dropped the only ground he had pleaded in his Defence and Counter Claim, there was nothing left for the plaintiffs to answer; that the defendant could not now go outside the pleadings and rely on other grounds which he had not pleaded; that the defendant was now endeavouring to rely on the ground that the testator "did not know and approve of the contents of the Will" which ground has not been pleaded; that the defendant was in breach of Rule 13(3) of Order 72 of the Rules of the Supreme Court which requires that any party who pleads such ground must specify the nature of the case on which he intends to rely.

The material part of Rule 13(3) of Order 72 of the Rules of the Supreme Court read as follows:—

"(3) Without prejudice to Order 18, Rule 7, any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely...."

I agree with counsel for the plaintiffs that if the defendant was relying on the defence of "want of knowledge and approval" he should have so pleaded and given particulars thereof. As the defendant has failed to do that he is clearly in breach of Rule 13(3) of Order 72 of the Rules of the Supreme Court and therefore cannot succeed on that ground.

Quite apart from this procedural defect there is no evidence at all to support this defence. No medical evidence has been called to support it nor is there any other evidence. The evidence of Mr. Jumabhoy, which I accept, clearly shows that the testator was a free and capable testator. He was mentally alert and

knew what he was doing. He was able to give instructions for his Will and the instruction sheets (A.B.1 to A.B.13) produced by Mr. Jumabhoy show that the Will is in accordance with the instructions of the testator. This is conceded by Tan Sri Esa. The testator read the draft Will and also the engrossed Will before he signed it. Mr. Jumabhoy's evidence that the testator was mentally aleart, spoke clearly, understood the Will and knew what he was doing has not been challenged.

It is submitted that the testator's memory was so poor that he had even forgotten his only son and that it was only when Mr. Jumabhoy pointed out to him that he had left out his son that the defendant was included as a beneficiary. The fact that he had left out his son as a beneficiary does not prove that his memory was poor. He may have had good reasons to exclude his son. If the testator had told Mr. Jumabhoy that he had no son or no children, that would have been evidence of loss of memory. But the testator never said such a thing. In fact the testator did give some reason to Mr. Jumabhoy for excluding his son. And Mr. Jumabhoy's evidence is that he persuaded the testator to include his son as a beneficiary. There is not an iota of evidence to support the allegation that the testator had a feeble mind, poor memory and did not understand the Will.

Counsel for the defendant cited the decision in *Battan Singh and others* v. *Amirchand and others*.[1] In my opinion the decision in that case is of no help at all to the defendant. It was based on the particular facts of that case which were quite different from those in the present case.

In my judgment there is no evidence at all to support the defence of "want of knowledge and understanding". The evidence is all the other way. This defence therefore clearly fails.

The defendant also relies on A.B.43 and A.B.44. Here again, counsel for the plaintiffs submits that the defendant is going outside his pleadings by raising the defence of revocation which he has not pleaded.

It is true that the defendant has not pleaded revocation but the court must I think consider the effect of A.B.43 and A.B.44 on the testator's Will because particulars of these letters have been pleaded in the Defence and Counter Claim. It seems to me that the circumstances surrounding A.B.43 are very relevant. The defendant's case, as I understand it, is not that the Will has been revoked in accordance with the Wills Act. Although his counsel did not put it so clearly, the defendant's case is that the testator was seriously ill in hospital. He had changed his mind regarding the distribution of his estate and wanted to revoke his Will which was not with him. He wrote a letter to Mr. Jumabhoy who had prepared the Will and who had custody of it, requesting him to cancel it. He entrusted the letter to Shaik Mohamed his reliable friend, neighbour and employee, to deliver it to Mr. Jumabhoy. What else could he have done? Had the letter been delivered to Mr. Jumabhoy he would have taken proper steps to have the Will revoked. Under the circumstances why should the defendant be deprived of his rights now because Shaik Mohamed failed to deliver the letter to Mr. Jumabhoy. This argument, of course, cannot be raised in respect of A.B.44 because it was the defendant who suppressed that letter.

In short, the defendant's case based on A.B.43 and A.B.44 is that these letters show not only a clear intention but also a strong determination on the part of the testator to revoke the Will; that he did all that he could towards that end in the circumstances in which he was placed; that it was the wrongful act of a third party which prevented the Will being revoked and that therefore the plaintiffs should not be allowed to benefit, and the defendant to suffer, from the wrongful act of a third party.

There is no doubt that if A.B.43 had been delivered to Mr. Jumabhoy, he would have gone, as stated by him, to see the testator to obtain his instructions regarding the "cancellation" of the Will. Likewise, I feel certain that if A.B.44 had been delivered to Tan Sri Esa, he too would have gone to see the testator who was not only his client, but also his personal friend, and if the testator really wanted to revoke his Will, steps would undoubtedly have been taken to revoke it according to law. But it is not the law that mere intention or even attempt of a testator to revoke his will, is sufficient to produce revocation, within the meaning of the Wills Act, for the legislature having pointed out certain modes by which a Will may be revoked, it is not in the power of the court, under any circumstances, to dispense with any of its requisites, and accept the mere intention or endeavour to perform the prescribed act, as a substitute or equivalent for the act itself, though the intention or endeavour may have been frustrated by the improper behaviour of a third person.

For example, in *Doe on the Demise of Reed* v. *Alice Harris*,[2] the testator threw his will on the fire from which it was immediately snatched by a female relative who lived with him. The fire had merely singed the cover. The testator afterwards insisted upon her giving up the will to be burnt, which she promised to do and in order to satisfy the testator, threw something into the fire, which she pretended was the will but in fact it was not. This was a clear case where the testator wanted to revoke his will be burning it in the fire and was prevented from doing it by the intervention of a third party. It was argued before the Court of Queen's Beach that the testator's intention to revoke his will was defeated by the fraud of another party and such fraud ought not to defeat his act. All the four judges who sat in the Court of Queen's Bench were unanimous in the view that the will had not been revoked. Lord Denman C.J. said at page 81:—

> "... It would be a violence to language, if we said here that there was any evidence to go to the jury of the will having been burnt. Great inconvenience would be introduced by holding that there may be a virtual compliance with the statute; but there is none in saying that, if a testator perseveres in the intention of revoking his will, he shall fulfil it by some of the means pointed out in the statute; that he shall revoke the will, if not in his possession, by writing properly attested; or cancel it, if in his power, by some of the other acts which the statute prescribes."

Though a testator may have done everything which he considered necessary to revoke his will, the will is not revoked if he has not adopted one or other of the

modes of revocation laid down in the Wills Act. Thus, writing across a will that it is revoked, and throwing it into the wastepaper basket, will not revoke the will if it is in fact preserved. In *Cheese* v. *Lovejoy*,[3] the testator drew his pen through the lines of various parts of his will, wrote on the back of it, "This is revoked" and threw it among a heap of waste paper in his sitting room. A servant took it up and put it on a table in the kitchen. It remained lying about in the kitchen till the testator's death seven or eight years afterwards, and was then found uninjured. The Court of Appeal held that the will was not revoked, because whatever the testator intended, the will had not been actually injured. James L.J. said, at page 253:—

"It is clear that a symbolical burning will not do. A symbolical tearing will not do, nor will a symbolical destruction. There must be the act as well as the intention. As it was put by Dr. Deane in the court below, 'All the destroying in the world without intention will not revoke a will, nor will all the intention in the world without destroying: there must be the two'."

The revocatory act, if done by a third person by the testator's direction, must also be done in his presence. Thus, if a testator writes to his solicitor or telephones him, instructing him to destroy the testator's will, the solicitor's compliance would be ineffective to revoke the will. A solicitor who complies with such a direction without advising his client of the consequences would be guilty of a considerable professional error. See *In the Estate of De Kremer*.[4]

It is very unfortunate for the defendant, that although he was present and saw his father wrote out A.B.43, the defendant did not sign on A.B.43 as a witness or get another person, for example, a nurse from the hospital, to sign it. Had the letter A.B.43 been attested by two witnesses, it would have been sufficient to revoke the Will in question on the authority of *In the Goods of Durance*,[5] which was followed and applied by the Court of Appeal in *Re Spracklan's Estate*.[6]

In my judgment, the plaintiffs have established the Will of the testator. It was executed in accordance with the requirements of section 6 of the Wills Act. When executing the Will, the testator was alert and in command of his mental faculties. He executed the Will with full knowledge and understanding of its contents. The Will has not been revoked and is entitled to probate. The defendant's counter-claim is dismissed.

Counterclaim dismissed.

Solicitors: *Suppiah & Co.; Pillai & Co.*

RAYMOND BANHAM & ANOR. v. CONSOLIDATED HOTELS LIMITED

[O.C.J. (Winslow J.) November 13, 1975]
[Singapore — Suit No. 2455 of 1974]

Contract — Professional services rendered — Claim for payment — Failure of plaintiffs as overseas professional engineers employed in Singapore to register themselves under Professional Engineers Act — Whether contract is illegal and unenforceable — Professional Engineers Act (Cap. 225), ss. 2, 8, 18 and 19.

Engineers — Overseas professional engineers — Professional requirement — Non-compliance with registration requirement — Whether contract becomes illegal and unenforceable — Professional Engineers Act (Cap. 225), ss. 2, 8, 18 and 19.

The plaintiffs, partners of a firm of consulting Mechanical and Electrical Engineers practising in Hongkong, rendered professional services in respect of the Hotel Sheraton project owned by the defendants. This was pursuant to a contract made between the plaintiffs and the defendants. The plaintiffs claimed for the sum of $106,250 being 85% of the value of work completed by them.

The defendants contended that the said contract was illegal and unenforceable in court because the plaintiffs were not registered as required by the Professional Engineers Act (Cap. 225).

Held: (1) the plaintiffs were engaged in professional engineering work in Singapore even though the drawing of plans was carried out in Hongkong;

(2) an overseas professional engineer who undertakes employment as such in Singapore even in respect of one isolated project as this one would be contravening the provisions of section 18 should he fail to register himself unless he engages in such employment under the direction or supervision of a registered professional engineer;

(3) services performed by the plaintiffs under the aforesaid contract were therefore illegal in that the plaintiffs never took steps to get themselves registered beforehand nor to engage in such services under the direction or supervision of a registered professional engineer;

(4) the plaintiffs' claim was therefore unenforceable notwithstanding the defendants' own participation in this illegal contract.

Cases referred to:-

(1) *Re Mahmoud and Ispahani* [1921] All E.R. Rep. 217.
(2) *Cope v. Rowlands* (1836) 150 E.R. 707.
(3) *Archbolds (Freightage) Ltd.* v. *S. Spanglett* [1961] 1 Q.B. 374.

CIVIL SUIT.

C. S. Wu for the plaintiffs.

Robert Hsieh for the defendants.

Winslow J.: The validity of the plaintiffs' claim against the defendants, for professional services rendered, in the sum of $106,250 being 85% of the value of work completed by them upon a quantum meruit basis is challenged by the defendants on a number of grounds, the chief one of which is that the contract upon which the claim is based is an illegal one and therefore unenforceable.

The plaintiffs claim is made by them under O.XV r.12(1) in a representative capacity as partners of the firm of J. Roger Preston and Partners, a firm of Consulting Mechanical and Electrical Engineers practising in Hongkong and to dispose of an objection raised against the claim on the ground that the plaintiffs were not parties to the said contract and that accordingly have no cause of action I would hold that I am satisfied on the evidence that they properly appear in a